

2023:PHHC:101099

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108)

CWP-16536-2023
Date of Decision : August 04, 2023

Rahul

.. Petitioner

Versus

State of Haryana and another

.. Respondents

(108-2)

CWP-16537-2023

Nitesh Kumar and another

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(108-3)

CWP-16549-2023

Ajay Kumar and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(109)

CWP-16620-2023

Sandeep Kumar and another

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CWP-16536-2023 and other connected cases		2
(110)	CWP-16623-2023	
Ajay		.. Petitioner
Versus		
State of Haryana and another		.. Respondents
(111)	CWP-16632-2023	
Parveen and another		.. Petitioners
Versus		
State of Haryana and another		.. Respondents
(112)	CWP-16634-2023	
Anil Kumar and others		.. Petitioners
Versus		
State of Haryana and another		.. Respondents
(113)	CWP-16647-2023	
Parveen Kumar and others		.. Petitioners
Versus		
State of Haryana and others		.. Respondents
(114)	CWP-16651-2023	
Pankaj Kumar		.. Petitioner
Versus		
State of Haryana and another		.. Respondents

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(120)	CWP-16898-2023	
Satyapal and others		.. Petitioners
Versus		
State of Haryana and others		.. Respondents
(125)	CWP-16912-2023	
Angrej		.. Petitioner
Versus		
State of Haryana and another		.. Respondents
(127)	CWP-16918-2023	
Anirudh		.. Petitioner
Versus		
State of Haryana and another		.. Respondents
(129)	CWP-16921-2023	
Ismile Khan and others		.. Petitioners
Versus		
State of Haryana and another		.. Respondents
(130)	CWP-16924-2023	
Sanjay Kadian and others		.. Petitioners
Versus		
State of Haryana and another		.. Respondents

(131)	CWP-16925-2023	
Ahmed		.. Petitioner
	Versus	
State of Haryana and others		.. Respondents
(132)	CWP-16946-2023	
Madhu		.. Petitioner
	Versus	
State of Haryana and another		.. Respondents
(133)	CWP-17042-2023	
Devender and others		.. Petitioners
	Versus	
State of Haryana and another		.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ankur Sidhar, Advocate, for the petitioner
in CWP Nos.16536, 16549, 16632, 16634, 16912 and
16924 of 2023.

Mr. Rajat Mor, Advocate, for the petitioner
in CWP No.16537 of 2023 and CWP No.17042 of 2023.

Mr. Mazlish Khan, Advocate, for the petitioner
in CWP Nos.16620 and 16925 of 2023.

Mr. Ravinder Singh Dhull, Advocate, for the petitioner(s)
in CWP Nos.16623, 16647, 16651, 16898, 16918 and 16921
of 2023.

Mr. Anil Kumar Sharma, Advocate, for the petitioner
in CWP No.16946 of 2023.

Mr. B.R. Mahajan, Advocate General, Haryana with
Ms. Shruti Jain Goyal, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, a bunch of writ petitions, the details of which have been given in the heading, are being decided wherein, the merit list prepared on the basis of the Common Eligibility Test undertaken by the State of Haryana is under challenge as well as the consequent process undertaken by the respondent-State for making appointment to various posts of Group-C Cadre as advertised vide advertisement dated 07.03.2023.

The State of Haryana issued a notification on 05.05.2022 by which, the policy for the recruitment to Group-C and D through Common Eligibility Test, 2022 was formulated. As per the said policy, a Common Eligibility Test was to be held for Group C and D post which was to be conducted by Haryana Staff Selection Commission or any other Agency as decided by the Government. The marks obtained in the Common Eligibility Test were described as “CET Marks”. As per the policy, a candidate in order to clear the Common Eligibility Test, belonging to General Category, was required to have minimum 50% marks in the said Common Eligibility Test whereas, for the reserved category, the same was 40%.

A candidate who clears the eligibility test, was further entitled for weightage under socio economic criteria if claimed and admissible for which, extra marks was to be added to the marks obtained by a candidate in CET, which final score of the candidate concerned is described as CET score as per the notification dated 05.05.2022. On the basis of said CET score, ultimate merit of the candidates, who appear in the Common Eligibility Test, is prepared, which merit list is the basis for a candidate to apply for Group-C and D posts apart from the other eligibility criteria which

may be prescribed for a particular post for which a candidate is competing for.

The Common Eligibility Test was held on 05/06.11.2022 by the Haryana Public Service Commission. The result of the same was declared on 10.01.2023, which announced the CET score of a candidate and the merit list of all the candidates, who appeared in the Common Eligibility Test, which merit list was to be taken into consideration while undertaking the process of making appointment to various Group-C and D posts.

On 01.02.2023, the Commission issued a public notice that in case any candidate has wrongly raised a claim with regard to the grant of marks under the socio economic criteria and the same has been allowed in their favour, the said claim should be withdrawn failing which, the candidature of the defaulting candidates will be summarily rejected.

A similar notice was again published by the respondent on 10.03.2023.

It may be noticed that the respondent-Commission issued the advertisement on 07.03.2023 advertising various posts which posts were to be filled up on the basis of written examination to be conducted in case the candidate fulfills the required Eligibility conditions prescribed in the said advertisement.

In the said advertisement, as per Clause 7, the candidates who were to be called for interview, were from the merit list as prepared on the basis of CET score of the candidates and the number of candidates to be called for written test to be held for selection in pursuance to the advertisement was restricted. In case the number of posts advertised in a particular cadre is less than 30, then the candidates equal to five times number of posts of advertisement were to be called keeping in view their

merit prepared on the basis of CET score. If the posts are more than 40, then candidates equal to four times number of posts advertised were to be called for competing for the post as advertised on 07.03.2023.

This shows that the CET score is the basis for process to be undertaken for selection in pursuance to the advertisement dated 07.03.2023. The CET score of a candidate obtained in the Common Eligibility Test which will include the marks in the written examination in the Common Eligibility Test plus any weightage given to the said candidate is the basis so as to decide as to whether a particular candidate will be eligible to compete for the posts as advertised on 07.03.2023.

The merit list prepared on the basis of CET score announced by the respondent-Commission of the candidates who appeared in the Common Eligibility Test, was challenged by the candidates before this Court by filing CWP No.11370 of 2023. In the said petition, the grievance was that the respondent-Commission is going ahead in making the selection to the various posts in pursuance to the advertisement dated 07.03.2023 without redressing the grievance of the candidates that the merit list prepared on the basis of Common Eligibility Test has been prepared by giving weightage of extra marks under socio economic criteria in CET score to certain candidates, who were not entitled for the said benefit and the said action is causing prejudice to them. Respondent-Commission undertook before this Court that the Commission has taken a conscious decision to postpone the written exam which was scheduled to be held on 01.07.2023 in pursuance to the advertisement dated 07.03.2023 till the revised result of the Common Eligibility Test is finalised and uploaded.

Thereafter, once again, another notice was issued by the Commission on 28.06.2023 asking the candidates who have been given

marks under the socio economic criteria as to whether, they wish to withdraw the said claim so that the CET score could be re-finalized so as to be used for the purpose of initiating the process for selecting the candidates in pursuance to the advertisement dated 07.03.2023.

The said writ petition came up for consideration before this Court on 24.07.2023 on which date, learned State counsel again submitted that the revised final result of the Common Eligibility Test will be declared within a period of 2-3 weeks and only thereafter, the selection process will be initiated qua the advertisement dated 07.03.2023. On the basis of said undertaking given, the said writ petition was disposed of having been not pressed any further.

On the very next day i.e. on 25.07.2023, the respondents again published the revised CET score, which is the merit list, which was to be made operational for the process of making selection to the posts which were advertised vide advertisement dated 07.03.2023.

After declaring the revised CET score, the respondents fixed the date for holding written examination in pursuance to the advertisement dated 07.03.2023 i.e. on 05-06.08.2023 for Group 56 and 57.

The present petitions have been filed raising two fold grievances. Firstly that without verifying the claim of the candidates qua the award of weightage under the socio economic crieteria, the CET score has been re-finalized vide revised merit list dated 25.07.2023 which is not correct, as till the certificates given by the candidates to claim the said benefit are verified by the agency, benefit of the same cannot be given as the same is causing prejudice to the other candidates. Further, the grievance is raised that though certain candidates have already withdrawn their claim for marks under the socio economic crieteria but in the revised merit list,

they still have been given the same marks while preparing the CET score which shows that the CET score, as released on 25.07.2023, is without any application of mind and is not correct in the facts and circumstances of the present case and cannot be relied upon for undertaking the process of selection in pursuance to the advertisement dated 07.03.2023.

The second grievance is that even while calling the candidates for written test, revised merit is also not being adhere to as certain candidates who have higher marks have not been called whereas the candidates having lower CET score has been called.

Keeping in view the advance copy given, learned counsel for the Commission appeared on 01.08.2023 and sought time to consider the objections being raised by the petitioners qua the preparation of the revised merit list (CET score) which is being made basis for calling the candidates for written test to be held in pursuance to the advertisement dated 07.03.2023 and the case was adjourned to 04.08.2023.

No written reply has been filed by the respondent-Commission but learned Advocate General, Haryana submits that his oral submissions may kindly be taken into consideration for deciding the issue as the matter is urgent keeping in view the fact that the written test for Group 56 and 57, to be conducted in pursuance to the advertisement dated 07.03.2023 is scheduled for tomorrow and day after tomorrow i.e. 05/06/08.2023.

Learned Advocate General Haryana appearing on behalf of the respondent-Commission submits that though, marks for socio economic criteria have been given to the candidates on the basis of the documents attached by them but the said documents have not been verified so as to establish what the said candidates are actually entitled for the said marks keeping in view the facts and circumstances of the candidates concerned

qua factual aspect and qua the genuinity of the said documents attached to claim the benefit.

Learned Advocate General, Haryana concedes to the fact as has already come on record, that certain candidates who had claimed the benefit of extra marks against the weightage given under socio economic criteria though they were not entitled for the same and submits that it was for this reason why the options were given to them to withdraw their bogus claims and that certain candidates have withdrawn their claims as well. He further submits that the Commission has not verified the veracity of the documents and the other necessary facts pertaining to valid candidature of each candidate as there are large number of candidates who appeared in CET who had submitted their documents to claim extra marks against weightage given under socio economic criteria and also because of the fact that there is very short time at this stage to do the same as written examination had already been scheduled by the respondent-Commission for 05/06.08.2023.

Learned Advocate General, Haryana further submits that even otherwise, if a candidate has wrongly claimed the benefit of extra marks given against the weightage under socio economic criteria and appears in the examination to be held on 05/06.08.2023, his/her candidature will be cancelled at the later stage when the documents staking claim to the said extra marks will be called to be submitted for the purpose of verification.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Before advertng to the merits of the claim being raised by the petitioners and the defence being raised by the respondent-Commission, it may be noticed that wherever the selection process has to be undertaken in Government service, the same has to be fair, transparent and accountable.

Any irregularity in the process undertaken raises question as to whether the process undertaken denies equal access as per the Constitution to all the persons or not.

For the said view, the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.639-640 of 2021 titled as Sachin Kumar and others Vs. Delhi Subordinate Service Selection Board (DSSSB) and others, decided on 03.03.2021***, can be relied upon and relevant para of the said judgment is as under:

“2. This judgment visits a familiar conundrum in service jurisprudence. The constitutional values which undergird Articles 14 and 16 mandate that selection process conducted by public authorities to make recruitments have to be fair, transparent and accountable. All too often, human fallibility and foibles intrude into the selection process. Selection involves intense competition and there is no dearth of individuals who try and bend the rules to gain an unfair leap in the race. Irregularities in the process give rise to misgivings over whether the process has denied equal access to all persons. The sanctity of the selection process comes under a cloud.”

Keeping in view the said settled principle of law, the grievance being raised by the petitioners in the present writ petitions, needs to be addressed as to whether, the selection process in pursuance to the advertisement dated 07.03.2023 is being undertaken by the respondent-Commission in a free, fair and transparent manner so as to give equal access to all the candidates.

From the pleadings which have been noticed hereinbefore, it is

clear that the basis of selection process to be undertaken in pursuance to the advertisement dated 07.03.2023 is the CET score obtained by the candidates who appeared in the Common Eligibility Test which was held in pursuance to the notification dated 05.05.2022. As per the selection criteria to be adopted for making selection to the posts as advertised vide Advertisement dated 07.03.2023, the candidates, who are to be called for written examination has been limited keeping in view the number of posts advertised and all the candidates who have cleared the CET test are not entitled to be called so as to participate for selection in pursuance to the advertisement dated 07.03.2023. Once all the candidates who have cleared the Common Eligibility Test will not get a chance to compete for the post advertised vide advertisement dated 07.03.2023, it becomes uncompromisable that the CET score/merit list is prepared in a manner which shall not give rise to any irregularity or ambiguity so that all the candidates have been given fair chance for evaluation of their claim to participate in the examination being conducted in pursuance to advertisement dated 07.03.2023. It is a matter of fact that even as per the statement of learned Advocate General, Haryana, it cannot be ruled out that certain ineligible candidates have been given marks under the socio economic criteria which is part of their CET score which has been taken into account while fixing their merit as verification of the documents submitted to stake claim qua the same is yet to be done.

Learned Advocate General, Haryana, further as mentioned before conceded to the fact that when it came to the knowledge of the respondent-Commission that certain candidates have attached certificates claiming the benefit of extra marks under the socio economic criteria which were either forged or were not issued by a competent authority, a notice was

published giving all the candidates a chance to withdraw their claim so that revised merit list could be published. This fact itself shows that certain candidates claim the benefit of extra marks under socio economic criteria which benefit was given to them without verifying their documents.

No doubt, certain candidates have withdrawn their claim who are not entitled for said benefit of extra marks which were given to them while computing their CET score but the fact remains that there is a possibility that other candidates who were not entitled for the said extra marks under socio economic criteria did not withdrew their claim as it has been conceded by the learned Advocate General, Haryana that the veracity of the claims of all the candidates appearing the merit list has not been verified through perusal of the documents submitted by them.

In the light of the said fact it is evident that the process which has been adopted by the respondent-Commission while issuing the revised result i.e. CET score of all the candidates is neither transparent nor evokes any confidence as to its fairness giving equal access to all the candidates. Once the CET score is basis for further consideration for selection and appointment in pursuance to the advertisement dated 07.03.2023, it becomes the duty of the Commission to first ascertain as to whether any candidate who has claimed marks under the socio economic criteria is entitled for the same by verifying the supporting documents attached by the candidates to claim the said benefit of extra marks.

Once it is conceded before this Court that the candidates have been given marks merely on the basis that they have claimed the same in their applications without verifying the genuinity of the supporting documents attached by them with their applications, any merit list prepared in pursuance to the same cannot be treated as a result of fair and transparent

process. The grievance being raised by the petitioners is very much genuine. Till the CET score is prepared in a transparent manner by evaluating the claim of all the eligible candidates qua their entitlement against extra marks under the socio economic criteria, revised merit list cannot be treated to be correct, satisfying or prepared through evolving a fair process.

Further, the assertion of the learned Advocate General, Haryana that in case a candidate has been given extra marks under the socio economic criteria wrongly, his candidature will be rejected even if he participates in the selection process in pursuance to the advertisement dated 07.03.2023 at the stage of verification of the documents but the said arguments cannot be accepted for the reason that the said candidate who has been wrongly given the benefit of extra marks will not just participate in the selection process without entitlement but will also oust a genuine candidate from the zone of consideration who is otherwise eligible from participating for selection and appointment in pursuance to the advertisement dated 07.03.2023, which selection process restricts the number of candidates to be called for selection/appointment in pursuance to the said advertisement to three/four times of the vacancies advertised.

For example, in case there are five posts to be filled of a particular post in general category, for which 25 candidates are to be called, in case two such candidates should have been given marks under the socio economic criteria illegally, they might be declared ineligible at a later stage but candidates at Sr. No.26 and 27 of the merit will lose the chance to participate in the selection despite being eligible and having cleared the CET examination. The prejudice caused to such candidates cannot be remedied once the selection process is started. Hence, merely disqualifying

the ineligible candidates at a later stage, will not serve purpose in the facts and circumstances of the present case.

Further, learned Advocate General, Haryana requested that the holding of the written test be allowed as the petitioners who have raised the grievance can be allowed to participate provisionally. This will also not suffice the selection process to be undertaken as, once a recruitment to a public post is to be made, the process which has to be adopted should be fair, transparent and accountable. Merely that the Commission is not advertent to its duty of verifying the claim of the candidates before awarding the marks under socio economic criteria that a genuine candidate might not have approached this Court who is otherwise eligible hence allowing the petitioners to participate in the selection process provisionally will not render the selection process fair or transparent and the said request cannot be accepted.

Further, the conscious of the Court has to be satisfied that the process being undertaken by the respondents is free fair and there are no irregularities exist and all the candidates are being provided equal opportunity to compete. In the present case, once keeping in view the facts and circumstances of this case that there exist irregularities keeping in view the process adopted by the Commission so as to formulate the Common Eligibility Test score of the candidates, merely that the petitioners are being allowed to participate provisionally in the written test will not render the selection process above board.

Therefore, even on this account, the prayer that the petitioners are being allowed to provisionally, will not render the process being adopted by the Commission as transparent or accountable so as to give equal chance to all competing for the post.

Further it has also come on record that though certain candidates have withdrawn their benefits under the socio economic criteria but in the revised merit list they again have been given the marks for the socio economic criteria.

Learned Advocate General submits that such kind of discrepancies can be rectified.

These discrepancies should have been rectified before declaring the result of the Common Eligibility Test. This shows that even as of now there are candidates who might have withdrawn their claim for socio economic criteria but in the final result, again their marks exist while preparing their CET score, which fact render the selection process under clout.

Hence, keeping in view the facts and circumstances mentioned hereinbefore, the revised result issued by the respondents on 25.07.2023 cannot be treated as a valid one so as to be taken into consideration for undertaking the selection process in pursuance to the advertisement dated 07.03.2023 and hence the same is quashed with a direction to the respondents to verify the claim of each and every candidate who has claimed the benefit of five marks under socio economic criteria and thereafter prepared the revised merit list of Common Eligibility Test so as to undertake the selection process in pursuance to the advertisement dated 07.03.2023.

Further, at this stage, learned counsel for the petitioners submit that apart from the irregularities in the revised merit list of the Common Eligibility Test, even the candidates, who are to be called for interview, their roll numbers have not been given keeping in view the number of vacancies advertised in different cadres and in different categories.

Learned counsel for the petitioners submit that the Commission is required to publish the roll numbers of the candidates, who are found eligible to be called for the written test against the post for which they have applied keeping in view their Common Eligibility Test score so as to establish the transparency and fairness in the selection process.

Nothing has been brought to the notice of this Court as to why, once when the selections were made on earlier occasions, the candidates, who were found eligible after the written examination, their roll numbers were published by giving the details of the merit of the last candidate to be called for interview, why the same process has not been adopted by the Commission while calling the candidates for written test in pursuance to the Advertisement dated 07.03.2023 so as to avoid any allegation and to project the transparency and the fairness in the selection process. If the roll numbers of the candidates, who are to be considered for a particular post as well as category to be called for written examination, are given, not only the candidates will know against whom they are compete but a candidate, who has not been called for interview, will know that the last candidate to be called for written test against a particular post is at a particular merit position so as to be satisfied that he/she has rightly not been called for written examination while undertaking the process of selection as per the advertisement dated 07.03.2023.

Hence, after re-finalizing the revised merit list of the Common Eligible Test score as directed in this order, the respondents are directed that when the process for selection in pursuance to the Advertisement dated 07.03.2023 is to be undertaken, the roll numbers of the candidates, who are being called for written test for a particular post and that too under a particular category, should be given with the clear indication as to the marks

scored by the last candidate so called so as to project the fairness and transparency.

Keeping in view the above, the present petitions are allowed to the extent that the respondents will published a fresh revised Common Eligibility Test score of the candidates, who have appeared in the Common Eligibility Test and that too after due verification of the claims of the candidates, who have sought weightage under the Socio Economic Criteria as to whether, any candidate, who is claiming the said benefit, is entitled for the same or not. After verifying all the claims, the revised Common Eligible Test Score will be published and thereafter, the process of selection in pursuance to the Advertisement dated 07.03.2023 will be undertaken by the Commission and while undertaking the said process, the directions given hereinbefore, will be followed with regard to the publishing the roll numbers of the candidates, who are being called for written examination against a particular cadre post as well as in the different reserved categories of the said cadre along with the marks obtained by the last candidate to be called for written test in a particular category so as to eliminate any allegation and to project the transparency and fairness in the selection.

It may be noted that a written test is scheduled for 05/06.08.2023, which written test is based upon the revised merit list dated 25.07.2023, which has already been set aside hereinbefore, the respondent-Commission is directed not to hold the written test scheduled for 05/06.08.2023 as the same is going to cause prejudice to the candidates/petitioners and the said written test should only be held after the revised merit list of the Common Eligibility Test is published in terms of this order.

All the writ petitions are allowed in above terms.

August 04, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No